

PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into this 6th day of February 2018 (the "Effective Date") by and between Gulf Coast Student Housing, LLC ("GCSH") at 111 Main St., Suite E, Long Beach, MS 39560, and Encompass Develop, Design & Construct, LLC ("Encompass") at 106 East Jefferson Street, LaGrange KY 40031.

BACKGROUND

- GCSH will develop and operate private student housing near the campus of Southern Mississippi University (the "Student Housing"), to be developed through design, construction and procurement of FF&E work at an existing building on property located at 522 East Railroad Street, Long Beach, MS (the "Project").
- GCSH desires to retain Encompass as Asset Manager to provide services related to development of the Project and management of the Student Housing. Such services shall include securing a qualified operator for the Student Housing and providing development services for the Project and management of the Student Housing as further set out herein and as subsequently or from time to time agreed to by the Parties in writing.

In consideration of the foregoing and the mutual covenants contained in this Agreement, GCSH and Encompass agree to the following:

AGREEMENT

- 1. Term of Agreement.** This Agreement is effective on the Effective Date above and shall remain in effect until all obligations set forth in this Agreement have been satisfactorily fulfilled or until the Parties terminate this Agreement pursuant to the terms of this Agreement. The Parties shall only have a continuing obligation, after the termination, to comply with specific provisions of this Agreement intended for the other's benefit and that by its sense and context is intended to survive the completion, expiration or termination of this Agreement.
- 2. Scope of Services.** GCSH retains Encompass to serve as the Asset Manager for the Project and for the Student Housing (the "Services"). The Services of Encompass as Asset Manager shall include:
 - a.** Secure a qualified operator of the Student Housing (the "Operator") who will enter into an agreement with GCSH for operation of the Student Housing upon

completion of the Project.

b. Provide full oversight for the design, construction and procurement of FF&E and additional services related to the Project.

c. Provide design, construction and/or procurement services where there is potential for initial capital savings.

d. Provide oversight for the Operator, and provide oversight for a property manager if different or separate from the Operator.

e. Develop and maintain the budget, financial books and accounting, and exercise such controls as may be necessary for proper financial management for the Student Housing.

f. Select and contract for property management and maintenance if separate from the Operator.

3. GCSH Responsibilities. (Note that some of the responsibilities are outlined for clarity, but as Asset Manager, Encompass will provide oversight of these as noted.)

3.1 GCSH shall provide information to Encompass regarding design, development, program and operational requirements for the Project in a timely fashion, including agreements, contract documents, drawings, specifications, tests, inspections, reports, surveys, marketing information and other documents.

3.2 GCSH shall provide the development investment capital and other necessary funding and needed operational cash as required for development of the Project and operation of the Student Housing.

3.3 GCSH shall be responsible for the property management and maintenance fees for the Student Housing as an operating expense.

3.4 Unless otherwise specified, GCSH shall be responsible to obtain all approvals and required permits, variances, and easements for the Project as directed by the Asset Manager.

3.5 GCSH designates Jim Parrish (JP) who shall have the authority to render decisions on behalf of GCSH. JP may change the GCSH contact from time to time by written notice to Encompass.

4. Compensation and Terms of Payment.

GCSH shall compensate Encompass quarterly for its Services as the Asset Manager by paying Encompass five (5) days after the books are

closed for each quarterly Balance Sheet and P&L. GCSH will earn 70% of EBITDA of which they will collect 70% of free cash flow (free cash flow defined as EBITDA less mortgage payment) leaving a balance that will be accrued. Encompass will earn 30% of EBITDA of which they will collect 30% of free cash flow leaving a balance that will be accrued.

- 4.1 When cash flow is available from excess EBITDA to retire accrued earnings, the distribution would be to GCSH first for any additional funds it had provided to make mortgage payments and or operating expenses, then to Encompass to retire its accrued earnings and then to GCHS to retire its accrued earnings.
- 4.2 If the Student Housing cash flow is from the sale of the business, the distribution would first be to GCSH to retire the debt then to GCSH for any additional funds it has provided for mortgage payments or operating expenses, then to Encompass to retire its accrued earnings and then to GCSH to retire its accrued earnings. Any cash left after that distribution would be distributed 80% to GCSH and 20% to Encompass.
- 4.3 GCSH shall compensate Encompass monthly for additional services, such as design, construction and procurement services for the Project, as invoiced according to the cost of the work and Encompass' fee based on labor charges at billable hourly rates as set forth in the Exhibit 1 hereto, as well as reimbursable expenses, if it is mutually decided that it is financially beneficial to the Project to use Encompass for any of these additional services.
- 4.4 To the extent Encompass engages any subcontractors, consultants and vendors to perform any of the work or provide material/goods for the Project or related to the Student Housing, GCSH shall pay Encompass for such cost of the work and material/goods with no mark ups, and Encompass shall pay any such subcontractor, consultant and vendor within fifteen (15) days of Encompass' receipt of payment from GCSH for undisputed services or material provided by the subcontractor, consultant or vendor.
- 4.5 Reimbursable Expenses.
 - 4.5.1 Reimbursable expenses include the following ordinary, necessary, and reasonable expenses incurred by Encompass related to the additional services: out-of-town travel and subsistence cost, dedicated data and communication services, teleconferences, Project web sites, and extranets; cellular phones; computers;

printing; reproductions, plots and standard form documents; postage, handling and delivery of instruments of service; renderings, models, mockups, professional photography and presentation materials (i.e., computer studies, videos or CDs); and costs of Project related insurance approved and required by GCSH.

4.5.2 All reimbursement expenses shall be at the actual expense incurred by Encompass without markup.

4.5.3 If expenses are reimbursable, each request for reimbursement must be itemized and accompanied by receipts.

4.6 Encompass shall submit invoices, quarterly for Asset Management Services and monthly for any other additional services, describing in reasonable detail the costs related to any compensable work and additional services, as well as reimbursable expenses incurred in the preceding month. GCSH shall make payment within fifteen (15) days after GCSH receipt of an invoice and acceptance of services rendered under this Agreement.

4.7 The Parties may modify or order changes to the Services without invalidating this Agreement. The Parties shall agree to such changes in writing or via email by the Parties and, where applicable, Encompass shall be entitled to an equitable adjustment in compensation as a result of changes in the Services.

5. Additional Terms and Conditions of Agreement.

5.1 Termination or Suspension.

5.1.1 Either party may terminate this Agreement in whole or in part upon not less than thirty (30) days written notice to the other party for convenience. In the event of a termination for convenience, Encompass shall be entitled to payment for Services, as well as any other compensable work or additional services satisfactorily performed prior to termination, together with reimbursable expenses then due.

5.1.2 Either party may terminate this Agreement upon not less than thirty (30) days written notice to the other party should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. In the event of such termination, Encompass shall be entitled to payment for Services, as well as any other compensable

work or additional services satisfactorily performed prior to termination, together with reimbursable expenses then due.

5.1.3 If GCSH fails to make payments to Encompass in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Encompass' option, cause for suspension of performance of Services under this Agreement. If Encompass elects to suspend Services, Encompass shall give three (3) days written notice to GCSH due to GCSH's failure to make payment before suspending Services. If Encompass suspends Services, Encompass shall have no liability to GCSH to the extent of any delay or damage to GCSH because of such suspension of Services. Before resuming Services, Encompass shall be paid all sums due prior to suspension and any reasonable expenses incurred as a direct result of the interruption and resumption of Encompass' services.

5.2 Disputes.

5.2.1 The Parties shall commence all claims and causes of action, whether in contract, tort, or otherwise, against any other party arising out of or related to this Agreement within the time period specified by applicable law.

5.2.2 The Parties, however, first shall endeavor to resolve claims, disputes and other matters in question ("Dispute") between them by negotiation in good faith.

5.2.3 If negotiation fails to resolve a Dispute within 30 days after receipt of notice of the Dispute, then the Parties agree that any Dispute arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding arbitration.

5.2.4 Unless the Parties mutually agree otherwise, mediation shall be conducted in accordance with the American Arbitration Association Construction Industry Mediation Procedures in effect on the Effective Date. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation.

5.2.5 The parties to the mediation shall share the mediator's fee and any

filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- 5.2.6** If the Parties do not resolve a Dispute through mediation pursuant to this Section, the method of binding dispute resolution shall be arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association and administered by the American Arbitration Association. The venue of the binding arbitration shall be the location of the Project unless the Parties agree on another mutually convenient location. An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the parties to that arbitration, with costs and attorney's fees awarded to the prevailing party as determined by the arbitrator.

5.3 Insurance.

- 5.3.1** GCSH shall maintain Builder's Risk and General Liability insurance required of it in amounts sufficient for the Project scope and for the operation of the Student Housing, which at a minimum shall be consistent with the minimum insurance requirements identified in the attached Exhibit 2. Encompass shall be named as an additional insured on the policies maintained for the Project and for the Student Housing. Each policy shall be endorsed to provide Encompass with at least 30 days' advance written notice of non-renewal, reduction in coverage or cancellation. Upon request, GCSH shall provide Encompass certificates of insurance outlining evidence of insurance and the terms thereof.

- 5.3.2** GCSH shall cause its own Project related contractors to maintain insurance as required by GCSH and consistent with the minimum insurance requirements of Exhibit 2. To the extent feasible, if GCSH is named as an insured on any such party's liability insurance policy, Encompass shall also be named as an additional insured.

5.4 Indemnification.

- 5.4.1** To the fullest extent allowed by law, Encompass agrees to defend, indemnify, and hold harmless GCSH from and against all injuries, loss, causes of action, claims, liability, damages or judgments, including costs, expenses, and attorneys' fees, to the extent arising

in connection with, in relation to, or to the extent as a result of negligent acts, omissions or misconduct of Encompass or its consultants or subcontractors in the performance of the Services.

5.4.2 To the fullest extent allowed by law, GCSH agrees to defend, indemnify, and hold harmless Encompass from and against all injuries, loss, causes of action, claims, liability, damages or judgments, including costs, expenses, and attorneys' fees, to the extent arising in connection with, in relation to, or to the extent as a result of negligent acts, omissions or misconduct of GCSH or the Operator, or GCSH consultants, contractors or subcontractors, or as otherwise arise from GCSH's performance of or responsibilities under this Agreement.

5.5 Limited Waiver of Consequential Damages. Excluding losses covered by insurance required under this Agreement, GCSH and Encompass agree to waive all claims against each other for consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties herein.

5.6 Data and Information.

5.6.1 GCSH and Encompass acknowledge and agree that any Confidential Information disclosed to the other party or parties, their contractors, consultants, subcontractors or other representatives pursuant to this Agreement, shall be used only for the purposes contemplated in this Agreement, shall be kept confidential and shall remain the property of the disclosing party. The term "Confidential Information" means all knowledge, information, data, materials and trade secrets gained, obtained, derived, produced, generated or otherwise acquired by GCSH or Encompass and their agents, employees, contractors, consultants and subcontractors with respect to the Project and the Student Housing. "Confidential Information" shall not include any information: (1) that is or becomes publicly available without a breach of this Agreement, or (2) that GCSH or Encompass can show (by contemporaneous written records) that it had it in its possession before beginning the Project and before disclosure. GCSH and Encompass agree that the Confidential Information constitutes valuable trade secrets and that money damages cannot fully remedy any breach of this Section. GCSH and Encompass and their employees, agents, contractors, consultants and subcontractors shall not make or otherwise

disseminate any public announcement or press release with respect to the Project or the Student Housing without the other's prior approval.

- 5.7 Conflict of Interest.** The Parties understand generally the nature of each other's business and services and affirm that, to the best of their knowledge, no actual or potential conflict exists between GCSH and Encompass and their business or financial interests and services under this Agreement, and that either shall raise with the other any questions regarding possible conflict of interest that may arise.
- 5.8 Binding on the Operator.** GCSH agrees to bind the Operator to all provisions of this Agreement as may apply to the Operator.
- 5.9 Use of Owner Name or Logo.** The Parties agree not to use the name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with the other party to this Agreement or the name of any representative of the other party to this Agreement in any sales promotion, work or advertising, or any form of publicity, without the other's permission.
- 5.10 Independent Contractor.** Encompass shall perform its duties hereunder as an independent contractor and not as an employee of or broker for GCSH. Neither Encompass nor any agent or employee of Encompass shall be or shall be deemed to be an agent or employee of GCSH. Encompass shall have no authorization, express or implied, to bind GCSH to any agreements, liability, or understanding except as expressly set forth herein.
- 5.11 Notices.** Any notice provided for or permitted under this Agreement shall be made in writing, and may be given or served by (i) delivering the same in person or by facsimile transmission to the party to be notified, or (ii) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, or (iii) by depositing same with a reputable overnight courier service, or (iv) by email with confirmation. For the purpose of notice, the address of the party shall be, until changed as hereinafter provided for, as follows:

If to Encompass:

John Stewart, President
Encompass Develop, Design & Construct, LLC
106 E Jefferson Street
LaGrange, KY 40031

If to GCSH:

Jim Parrish
Gulf Coast Student Housing, LLC
111 Main St., Suite E
Long Beach, MS 39560

- 5.12 Fund Availability.** GCSH represents and certifies that it has free access to the funds required to complete this Project and the operation of the Student Housing.
- 5.13 Non-Waiver.** No waiver by any party of any default or nonperformance shall be deemed a waiver of any subsequent default or nonperformance.
- 5.14 Assignment.** No party to this Agreement shall assign the Agreement without written consent of the other parties, and if any party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement.
- 5.15 Severability.** If any provision of this Agreement shall be invalid or unenforceable with respect to any party, the remainder of the Agreement, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of the remainder of the Agreement shall be valid and be enforceable to the fullest extent permitted by law.
- 5.16 Survivability.** The terms, provisions, representations, and warranties contained in this Agreement that by their sense and context are intended to survive the performance thereof by any of the parties hereunder shall so survive the completion of performance and termination of this Agreement, including the making of any and all payments hereunder.
- 5.17 Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original. A facsimile signature will constitute an original and binding signature of a party.
- 5.18 Agreement.** This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either oral or written.

This Agreement is entered into as of the Effective Date.

Gulf Coast Student Housing LLC

By: 

Title: MANAGING MEMBER

Encompass Develop, Design & Construct, LLC

By: 

Title: President

EXHIBIT 1 – ENCOMPASS LABOR RATES

Rates:

The following billing rates will apply to Encompass' compensable services:

Encompass 2018 Billable Rates

| Team Member Category | Classification | Billable Rate |
|--|----------------|---------------|
| Administrative Support | ADMIN | \$100 |
| Architect | ARCH | \$170 |
| Comptroller | COMP | \$155 |
| Construction Accountant | CAAT | \$105 |
| Construction / Coordination Manager | CM | \$220 |
| Designer | DESI | \$150 |
| Director/VP Construction | DSVP | \$220 |
| Principal | PRIN | \$325 |
| Procurement Project Manager | PPM | \$175 |
| Procurement Specialist | PS | \$120 |
| Project Engineer/Documentation Manager | PE | \$120 |
| Project Executive | PEX | \$260 |
| Project Manager | PM | \$220 |
| Owner's Representative | OR | \$220 |
| Quality Control Manager | QCM | \$150 |
| Safety Director | SDIR | \$180 |
| Safety Manager | SMGR | \$135 |
| Senior Interior Designer | SID | \$145 |
| Senior Leadership | SLEAD | \$325 |
| Counselor | COU | \$120 |
| Marketing Director | MD | \$145 |

EXHIBIT 2 – MINIMUM INSURANCE REQUIREMENTS

General Liability:

\$1,000,000 Per Occurrence / \$2,000,000 Aggregate Limits

Owned, Hired & Non Owned Auto Liability:

\$1,000,000 Liability Limit

Umbrella Liability: \$15,000,000 Limits

Property Coverage:

\$6.6M

Contents- On replacement cost the amount to replace the total contents or personal property owned in the building (tables, chairs, desks, furnishings, etc.). \$200k

Business Income/Extra Expense (Loss of Rents) \$1.3M